Filed 12/2/04 In re Bradley S. CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Tehama)

In re BRADLEY S., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. BRADLEY S., Defendant and Appellant.	C046649 (Super. Ct. No. J09896)

In January 2003, Bradley S. (the minor) admitted that he committed misdemeanor vandalism and two counts of misdemeanor battery. (Pen. Code, §§ 242, 594, subd. (a)(2)(A).) He was adjudicated a ward of the juvenile court (Welf. & Inst. Code, § 602), was placed on probation, and was ordered to serve five days in juvenile hall.

In February 2003, the minor admitted that he committed assault with a deadly weapon. (Pen. Code, § 245, subd. (a)(1).) He was continued on probation and was ordered to spend 39 days in juvenile hall.

In November 2003, the minor admitted that he committed two counts of forcible child molestation. (Pen. Code, § 288, subd. (b).) Other related allegations were dismissed, and he was committed to the California Youth Authority (CYA) for up to 11 years eight months.

On appeal, the minor claims the CYA commitment is not supported by sufficient evidence that it will benefit him and that less restrictive alternatives would be ineffective or inappropriate. We shall affirm the order.

FACTS

The probation reports set forth the following facts regarding the minor's crimes:

In October 2002, the minor and two other juveniles broke a glass door of a building in order to enter and occupy the building.

In December 2002, the minor assaulted two younger boys as they were getting off the school bus. The minor grabbed the front of one boy's shirt and made him call the minor "Sir." The minor then grabbed the other boy's shirt and twice hit him in the face with his fist, apparently because he was laughing.

In January 2003, the minor confronted an acquaintance for saying "things" about him. The minor, armed with a metal pipe, struck the victim's forehead with the pipe.

In June 2003, the minor forced an eight-year-old girl to touch his penis.

Again in June 2003, the minor forced a 10-year-old boy to touch the minor's penis.

DISCUSSION

The minor contends that commitment to CYA constituted an abuse of discretion because, in the minor's view, the record does not contain sufficient evidence that the commitment would benefit him and that less restrictive alternatives would be ineffective or inappropriate. We are not persuaded.

"The decision of the juvenile court may be reversed on appeal only upon a showing that the court abused its discretion in committing a minor to CYA. [Citations.] An appellate court will not lightly substitute its decision for that rendered by the juvenile court. We must indulge all reasonable inferences to support the decision of the juvenile court and will not disturb its findings when there is substantial evidence to support them. [Citations.] In determining whether there was substantial evidence to support the commitment, we must examine the record presented at the disposition hearing in light of the purposes of the Juvenile Court Law. [Citations.]" (*In re Michael D.* (1987) 188 Cal.App.3d 1392, 1395.) Those purposes include the "protection and safety of the public" and, to that end, punishment is now recognized as a rehabilitative tool. (Welf. & Inst. Code, § 202, subds. (a), (b); *In re Michael D., supra,* at p. 1396.)

Welfare and Institutions Code section 734 states: "No ward of the juvenile court shall be committed to the Youth Authority

unless the judge of the court is fully satisfied that the mental and physical condition and qualifications of the ward are such as to render it probable that he will be benefited by the reformatory educational discipline or other treatment provided by the Youth Authority."

Thus, "[t]o support a CYA commitment, it is required that there be evidence in the record demonstrating probable benefit to the minor, and evidence supporting a determination that less restrictive alternatives are ineffective or inappropriate." (*In re Teofilio A.* (1989) 210 Cal.App.3d 571, 576.) But it is not necessary that less restrictive alternatives be attempted before a CYA commitment is ordered. (*In re Eddie M.* (2003) 31 Cal.4th 480, 507; *In re James H.* (1985) 165 Cal.App.3d 911, 922.) In this regard, the seriousness of the offense may be considered. (*In re Abdul Y.* (1982) 130 Cal.App.3d 847, 869.)

The minor contends the evidence of probable benefit was insufficient because CYA's sexual offender treatment program is too small to accommodate all of the offenders committed to that institution. His argument is based in part on materials contained in his motion for judicial notice, which this court previously has denied. Thus, we must reject the argument to the extent that it is based on those materials.

The minor's argument also is based in part on the testimony of CYA employee Robert O'Neil, who was called a witness by the minor's mother.

O'Neil testified that CYA will have jurisdiction over the 13-year-old minor until he is 25 years of age, that the minor

will not be considered for parole for four years, and that the sex offender treatment program requires a minimum of two to two-and-one-half years. According to O'Neil, because 13-year-olds are not sufficiently mature to fully benefit from that program, the minor probably would be placed in "other treatment programs, and probably some out-patient counseling for the sex offender program," for the first one-and-one-half years.

O'Neal explained that the minor probably would be placed in a sex offender treatment group, "a small group that would meet once or twice a week with a psychologist, which would begin the treatment process and lay the foundation for his imminent placement into a -- into the in-patient program." At some point, his transfer to the in-patient program would occur.

O'Neil's testimony does not aid the minor. At most, O'Neil suggested that the 13-year-old minor would not benefit *from the in-patient program* for the first one-and-one-half years. However, O'Neil testified that the minor would "begin the treatment process and lay the foundation" for his later placement in that program. In short, the minor would be "learning how to behave." Nothing in the record suggests that beginning the treatment process and laying the foundation for an in-patient program would *not* be beneficial to the minor.

Accordingly, the juvenile court's finding of probable benefit is supported by substantial evidence. (*In re Teofilio A., supra,* 210 Cal.App.3d at p. 576.)

The minor contends that the evidence of ineffectiveness or inappropriateness of less restrictive alternatives was insufficient

because he "had only received probation with a few days in county jail," and had never been placed in a camp, ranch, or group home. Again, we disagree.

Dr. Shawn Johnston evaluated the minor and reported that the minor needed treatment for both his aggressive acting out and his inappropriate sexual behavior. Dr. Johnston found it was "doubtful" that the minor's treatment needs could be met at a "specialized juvenile sex offender group home or treatment program" because the minor's "history of interpersonal aggression and violence make it difficult for him to benefit from the kind of treatment typically available in such placement settings." Dr. Johnston reported that the juvenile sex offender group homes and residential treatment programs with which he was familiar are not equipped to deal with youngsters with such violent propensities; and they do not have sufficient monitoring and security to guard against aggressive behavior. Thus, he concluded that, "draconian as it may sound," only CYA could simultaneously treat the minor's propensities for physical violence and sexual aggression. At the disposition hearing, Dr. Johnston testified consistently with his report.

Michelle Wetmore, the director of the Juvenile Division of the Tehama County Probation Department, testified that group homes for sex offenders are not designed for minors who also have other behavioral problems.

After hearing this evidence, the juvenile court stated that "nothing has been submitted to this Court that there is in fact a group home in this State that would take this type of case,

both physical aggression and sexual aggression, [and] I really have no alternative provided to me other than there are sexual group homes in this State. There's nothing been submitted to me that there is in fact such a case that would take this minor. [¶] I have a minor who is a threat to others; and in the case before this Court I have two victims, one of [whom] the minor said that he would sock her if she told anybody; and the other situation involved a knife. So that is another major concern to this Court. [¶] And lastly, when someone at this age is so deceptive to invalidate a [psychological] test that's provided to him by Dr. Johnston, that is certainly something that is of concern -- should be of concern to all of us. The Court -- And I can't risk placing the minor into a situation where he could be committing a new offense on another victim."

The testimony of Dr. Johnston and Ms. Wetmore, as credited by the juvenile court, provides substantial evidence that any commitment less restrictive than CYA would be ineffective or inappropriate to treat this minor's physical and sexual aggression. (*In re Teofilio A., supra,* 210 Cal.App.3d at p. 576.)

DISPOSITION

The judgment is affirmed.

SCOTLAND, P.J.

We concur:

NICHOLSON, J.

RAYE, J.